

Ad Hoc Study Committee on Noise Attenuation Barriers

Report

April 22, 2002

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REPORT OF THE AD HOC STUDY COMMITTEE ON NOISE ATTENUATION BARRIERS
HOUSE OF REPRESENTATIVES TRANSPORTATION COMMITTEE
SENATE TRANSPORTATION COMMITTEE

April 22, 2002

The Ad Hoc Study Committee on Noise Attenuation Barriers consists of nine members appointed as follows: three members are appointed by the Speaker of the House of Representatives, three members are appointed by the President of the Senate, one representative from the Department of Transportation is appointed by the Governor, one representative from a municipality who is a mayor or council member, and one representative of a regional planning agency who is involved in transportation issues.

A public hearing was conducted on January 25, 2002 to take testimony on noise attenuation barriers. Testimony was given by Kevin Biesty, Arizona Department of Transportation; Fred Garcia, Arizona Department of Transportation; Dick Wright, Arizona Department of Transportation; Tami Ryall, representing the Town of Gilbert; Suzanne B. Gilstrap, representing the East Valley Property Owner's Consortium; and Brett DeWeese, representing himself.

Attachments to this report include:

1. The Committee Charge
1. Minutes of the public hearing. (Original minutes, attachments and tapes are on file in the Chief Clerk's Office.)

AD HOC STUDY COMMITTEE ON NOISE ATTENUATION BARRIERS

The purpose of the Committee is to: (1) review the current policy of the Arizona Department of Transportation (ADOT) regarding payment of costs associated with freeway noise attenuation barriers; (2) review municipal ordinances regarding payment of costs associated with freeway noise attenuation barriers; (3) evaluate and make recommendations for the enactment of a State statute or adoption of a State policy specifying who is responsible for the costs associated with freeway noise attenuation barriers and recommend a time frame for the delineation of responsibility for payment of costs associated with freeway noise attenuation; (4) review, evaluate and make recommendations regarding State statutes and the current ADOT policies regarding the recognition and application of general and special benefits and damages related to land acquisition for and construction of State highways. On or before October 30, 2001, or on or before the first day of any special session called on transportation issues, whichever occurs first, the Committee shall submit a written report of its recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives. The Committee shall provide a copy of its report to the Secretary of State and the Director of the Arizona State Library, Archives and Public Records.

COMMITTEE ON TRANSPORTATION

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2507

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Study committee on noise attenuation barriers

3 A. The study committee on noise attenuation barriers is established
4 consisting of the following members:

5 1. Three members of the house of representatives who are appointed by
6 the speaker of the house of representatives, not more than two of whom are
7 members of the same political party. One of these members shall be the
8 chairperson of the house of representatives transportation committee, who
9 shall serve as cochairperson of the study committee.

10 2. Three members of the senate who are appointed by the president of
11 the senate, not more than two of whom are members of the same political
12 party. One of these members shall be the chairperson of the senate
13 transportation committee, who shall serve as cochairperson of the study
14 committee.

15 3. One representative of the department of transportation who is
16 appointed by the governor.

17 4. One representative of a municipality who is a mayor or council
18 member of a municipality and who is appointed by the speaker of the house of
19 representatives.

20 5. One representative of a regional planning agency who is involved
21 in transportation issues and who is appointed by the president of the
22 senate.

23 6. Two members of the public who are currently impacted by the noise
24 attenuation policies of the department of transportation or city or town
25 noise attenuation ordinances, one of whom is appointed by the speaker of the
26 house of representatives and one of whom is appointed by the president of
27 the senate.

1 B. The study committee shall:

2 1. Review the current policy of the department of transportation
3 regarding payment of costs associated with freeway noise attenuation
4 barriers.

5 2. Review municipal ordinances regarding payment of costs associated
6 with freeway noise attenuation barriers.

7 3. Evaluate and make recommendations for the enactment of a state
8 statute or adoption of a state policy specifying who is responsible for the
9 costs associated with freeway noise attenuation barriers. The
10 recommendations shall contain a time frame for delineation of responsibility
11 for payment of costs associated with freeway noise attenuation.

12 4. On or before October 30, 2001, or on or before the first day of
13 any special session held on transportation issues, whichever occurs first,
14 submit a written report to the governor, the president of the senate and the
15 speaker of the house of representatives that includes the recommendations of
16 the study committee. The study committee shall provide a copy of the report
17 to the secretary of state and the director of the Arizona state library,
18 archives and public records.

19 C. Legislative staff and the department of transportation shall
20 provide services to the study committee as the study committee deems
21 necessary.

22 Sec. 2. Delayed repeal

23 Section 1 of this act, relating to the study committee on noise
24 attenuation barriers, is repealed from and after December 31, 2001."

25 Amend title to conform

and, as so amended, it do pass

DEAN COOLEY
Chairman

3/5/01
H:jmb

ARIZONA STATE LEGISLATURE

AD HOC STUDY COMMITTEE ON NOISE ATTENUATION BARRIERS

**Minutes of the Meeting
Friday, January 25, 2002
9:00 a.m., House Hearing Room 3**

Members Present:

Senator Mitchell
Representative Cooley, Cochair
Representative Burton Cahill
Representative Voss
Councilwoman Peggy Bilsten, City of Phoenix
Jim Bourey, Maricopa Association of Government
Mikel Shilling, Green Valley

Members Absent:

Senator Aguirre, Cochair
Senator Bundgaard
Victor Mendez, Deputy Director, Arizona Department of Transportation (ADOT)
Ronald Shepherd, Member

Staff:

Sean Laux, Senate Research Analyst
John Halikowski, House Research Analyst

Tape 1, Side A

Representative Cooley called the meeting to order at 9:05 a.m., and attendance was noted. He introduced the staff and asked all of the members to introduce themselves.

Representative Cooley stated the purpose of the Committee. His testimony came directly from the handout (Attachment A).

PRESENTATION OF ADOT POLICIES AND PROCEDURES

Kevin Biesty, Legislative Liaison, Arizona Department of Transportation (ADOT), made his presentation from a video (Attachment B). Mr. Biesty stated that Mr. Garcia will give a brief presentation and answer questions.

Fred Garcia, ADOT, stated that ADOT's policy was put in place in March 2000. They consider 64 decibels to be their action level. It is the lowest in the country.

Councilwoman Bilsten asked what the decibel level was prior to 2000 to receive mitigation. Mr. Garcia stated that the national level was 67, but the State level was 66. She further asked what sound walls would cost. Mr. Garcia stated the cost would vary, but it could go as high as 40 percent of the total costs. Councilwoman Bilsten stated that when a freeway is being constructed, it would make sense to go ahead and build the walls. Mr. Garcia stated that ADOT's regulations require them to look at mitigation when the noise level approaches or exceeds 67 decibels. Federal participation will only occur if we meet or exceed the higher levels of noise. Mr. Garcia stated that ADOT's new policy stipulates that when a project is complete, The Department has a three-year window to correct anything where they may have been in error, or to mitigate. Councilwoman Bilsten asked about projections and Mr. Garcia stated that they have a 20-year projection and design mitigation accordingly.

Representative Cooley asked what ADOT's policies are when they are obligated to put in a sound wall before and after the freeway is built. Mr. Garcia stated that all projects require a process to study all of the environmental impacts. After holding the required public hearings and environmental studies have been signed and approved, ADOT is not responsible to mitigate noise for new development. Representative Cooley stated that the environmental impact study involves evaluating the decibel levels of existing residential areas. Mr. Garcia stated that it involves existing and future residential areas. If a vacant parcel of land possesses a building permit at the time the environmental studies are completed, ADOT will be responsible for mitigating that parcel of land. If there is not a building permit, then ADOT is not responsible to mitigate.

Dick Wright, State Engineer, ADOT, stated that ADOT receives an annual amount of money from the Federal Highway Administration for their projects.

Representative Cooley asked ADOT's policy on existing freeways that begin to create a decibel above the level. Mr. Garcia stated that ADOT is responsible for the entire corridor that will be impacted based on the new levels. When ADOT improves an existing facility, they have to reassess all of the environmental impacts, including air quality and noise mitigation.

Representative Voss asked if ADOT considers the city zoning instead of dealing with just the building permit. Mr. Garcia stated that the city zoning is subject to change, so ADOT does not use it for the purposes of planning mitigation. ADOT feels that a building permit is a greater commitment than the zoning change. Mr. Garcia stated that there is no mitigation for industrial areas. Mr. Garcia also stated that the federal decibel level is 67. In 1995, there was a federal mandate that all departments of transportation must put forth their own policy. However, there could not be any noise levels greater than 67 decibels. Arizona's action level is 64 and it is the lowest in the country. Arizona is eligible to use federal funding for mitigation as soon as the decibel levels hit 64.

Tape 1, Side B

Representative Voss asked who pays for the mitigation when ADOT goes back in and determines that there needs to be a sound wall. Mr. Garcia stated that the cities are often willing to pay. However, if a wall is necessary, it would be ADOT's responsibility to pay for

the wall. In response to Representative Voss, Mr. Garcia stated that ADOT only has three years to go back and take a look at their previous analysis to make certain that they allowed appropriately for all the parameters and conditions. The three-year window starts at the time the project is completed.

In response to Representative Cooley, Mr. Garcia stated that if a decibel level does not reach 64, the resident would not qualify for mitigation. A person would have to obtain a permit from the local jurisdiction to build their own wall. ADOT also has a permit process for barriers that would be built on Department right-of-way.

Senator Mitchell asked if the federal funds for mitigation are only for federal freeways. Mr. Bourey answered that a freeway has to become eligible by going through the federal process.

Mr. Bourey stated that there was an estimate done to put walls in locations where the need had not been anticipated. If ADOT put walls everywhere they were needed, it would cost about \$1.3 billion.

Representative Cahill read from a newspaper article stating that developers must pay for the walls which could cost up to \$2.4 million per mile. It would cost the taxpayers \$300 million, including \$120 million for construction on the San Tan and Red Mountain freeways.

Ms. Shilling asked if the number of persons impacted influences the decision to build walls or if it is just the decibel number. Mr. Garcia stated that they take all of the factors into account and it is the same policy statewide. They do take into account the number of citizens affected. Mr. Garcia stated that what they mitigate is the constant hum. Ms. Shilling stated that rubberized asphalt reduces the sound.

In response to Representative Cooley, Mr. Garcia stated that there is approximately three to seven decibels difference between the standard pavement and the newer rubberized surfaces.

Councilwoman Bilsten asked if ADOT has a policy when they measure noise and how it is done in a 24 hour span. Mr. Garcia stated that they follow federal guidelines. They measure the noise at the noisiest times.

In response to Representative Cooley, Mr. Garcia stated that whenever they receive a complaint from a citizen, the first thing they do is schedule a visit to take a reading. They do this as a service even though ADOT has no responsibility in building a sound barrier wall at that point.

Senator Mitchell asked why they care about federal credit. Mr. Garcia stated that if the federal government agrees with the rubberized asphalt, they will pay for the mitigation.

Mr. Biesty stated that the federal government can approve what Arizona can use the federal share of money on. However, the walls can still be put up without federal support.

Representative Burton Cahill asked what ADOT does to clarify where a freeway will go and what the costs will be. Mr. Garcia stated that the National Environmental Policy Act was put into place so that ADOT could have a program to follow. All of the land that will be impacted has to be identified. ADOT holds public hearings and sends up to three certified letters to homeowners to inform them of the hearings.

Representative Voss asked if retrofit costs more than the initial build. Mr. Garcia stated that it does because the existing foundation might not hold the additional weight. ADOT would be involved in the mitigation as long as the criteria is met. ADOT is required to look at the feasibility of mitigating.

Senator Mitchell stated that the policy could be changed by the Legislature.

Tape 2, Side A

Representative Cooley stated that ADOT is not responsible for barriers on undeveloped property. He asked what responsibility the cities have in noise attenuation and who pays for these sound barrier walls. Mr. Garcia stated that the cities require the developer to allow monies through escrow to address mitigation. ADOT provides the decibel testing and allows sound barriers to be built on the right-of-ways owned by ADOT. Mr. Garcia stated that ADOT will review the analysis of the developer to make certain that it meets ADOT's criteria. The city has the responsibility after the EIS study. Representative Cooley asked if in recent years cities have paid for sound barrier walls. Mr. Garcia stated that numerous locations of noise walls have been constructed by cities. Representative Cooley stated that some cities are beginning to establish policies where they do not pay for the sound barrier walls, but the developer will pay for them. Mr. Garcia stated that is correct.

Councilwoman Bilsten asked how many cities have the policy where developers pay for the sound walls. Mr. Biesty said the representatives from the cities would answer that.

Tami Ryall, representing the Town of Gilbert, stated that Gilbert was the first city to introduce an ordinance, which subsequently has been adopted by the City of Glendale and Goodyear. Their ordinance significantly increased the public notification requirements to the extent of signs in the parking lots of model home complexes.

Mr. Bourey stated that ADOT's policy is not driven by a change in zoning. The policy was intended to mitigate for existing uses.

Representative Cooley asked if one possible solution would be for ADOT to establish a policy of looking at the potential sound barrier wall needs in a residential area and installing the area footings adequate to hold a sound barrier wall in the future. As it develops, the cities can build whatever they need in terms of sound barrier walls.

Mr. Biesty stated that this would need to be discussed further outside of the Committee hearing. He stated that this would create unnecessary expenditures.

Suzanne B. Gilstrap, Lobbyist, East Valley Property Owner's Consortium, stated that under ADOT's existing policy, if the permit has been pulled, ADOT will pay. If the permit is

not pulled, ADOT does not pay. A developer does not always pay either. Some of the property owners have to pay for the noise walls. A few people should not have to pay when others do not. The growing proliferation is to pass these costs onto property owners. The majority of older freeways are built below grade, which creates lower noise problems. Now the freeways are built at or above grade, which creates a bigger problem in terms of the noise. The Governor's Task Force is correct in stating that they should be looking at the transportation system from a regional perspective. Development fees were not implemented until 1980. Last year the Legislature passed a bill that allows cities, subject to voter approval, to bond additionally for freeways. She stated that ADOT should pay for the noise walls. Cities are required to have the voters adopt general plans. If there is a major amendment to the general plan, it requires a super majority of the council. The citizens still have the right to a referendum if they disagree. It is time to look at a policy that provides the full protection that citizens, who live along freeways, need and deserve.

Ms. Gilstrap further stated that it is discrimination when a small property owner pays more than the larger property because of freeway frontage.

Representative Burton Cahill stated that it possibly should be solved at the local level.

Ms. Gilstrap stated that no resident would say they benefit by being adjacent to a freeway. In terms of land that is zoned for residential purposes or property, the people might prefer to be somewhere other than adjacent to the freeway. You cannot say that all properties increase in value and benefit from a freeway. The commercial and industrial users are not required to have a sound barrier; however, in residential areas it is required. This devalues the property rather than increasing the value.

Representative Voss stated that the highways are still a State issue.

Councilwoman Bilsten stated that the reason ADOT is concerned with retrofit is because there are a lot of neighborhoods that should have them, but do not. While the freeway is being planned, it could be changed many times. This is certainly a quality of life issue.

Representative Burton Cahill stated that ADOT should improve its dealings with municipalities; however, she feels there will not be enough money.

In response to Representative Burton Cahill, Ms. Gilstrap stated that the quality of life should not be ignored to build more freeways. The freeways should not be built at the expense of people who need sound attenuation and quality of life.

Tape 2, Side B

Brett DeWeese, representing himself, stated that he resides due west of the 101 freeway. There are three elementary schools within one-half a mile. The noise from the freeway is constant. It is noise pollution. There are projections of phenomenal growth in the west valley. There will be no reduction in the noise from the freeway. He stated he would not put impact fees on the developers to raise the price of homes. He was wondering if this area would get sound walls.

Representative Voss stated that Mr. DeWeese would not get sound walls because the area adjacent to the freeway is commercial and industrial property. Mr. Biesty stated that sound walls would be based on the sound level where the house is located. It all fits into equations and standards. He could check that projection, but if there is commercial property, it does not qualify.

Ms. Shilling stated that many commercial properties want to be seen from the freeway and do not want sound walls.

In response to Representative Cooley, Ms. Ryall stated that it was her understanding that the legislation, to increase the expenditure limits on what cities could bond for street improvements and transportation issues, did not pass.

Representative Nelson stated that he is an engineer and has had staff that has designed freeways for ADOT. He has served on the Phoenix City Council for 16 years and has chaired the City's Transportation committee. He has worked with communities on mitigation. He stated that policy drives ADOT. He presented a handout and his testimony came directly from the handout (Attachment C).

Ms. Shilling presented a handout and her testimony came directly from the handout (Attachment D). She stated that her area is an ideal specimen for retrofitting. There has been no study completed on the impacts of the people who live along these roads. Areas around Yuma are impacted in the same way.

Representative Voss stated that Ms. Shilling's comments need to be discussed further.

Representative Cooley identified some options. He stated that one possibility is to require ADOT to put footings in where the general plan shows that there is going to be future residential property. A second possibility is to have ADOT put in full sound barrier walls wherever the general plan calls for residential areas. Finally, a major roadway has regional significance and local jurisdictions should have additional bonding capacity to take care of sound situations.

Mr. Biesty stated that further conversations need to take place. The engineers stated that the size of the wall will not be known until the kind of house and the proximity are known. Therefore, the wall could be useless. The area could also be zoned commercial and the stores would not want walls. Also, who would be responsible for the mitigation. These are issues that need to be discussed.

Representative Burton Cahill stated she is concerned about making recommendations at this meeting. She also would like to see fiscal notes for the costs of the different scenarios. Further, she would like to have someone from the League of Cities and Towns add their input.

Councilwoman Bilsten also would like to have another meeting and have more numbers on costs.

Tape 3, Side A

Representative Cooley asked the Committee their feeling about the idea of expanding the bonding capacity of the cities.

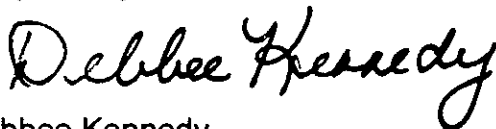
Representative Cahill stated that they need more expertise for this recommendation.

Mr. Bourey stated that there needs to be a revenue source that ultimately retires the bonds.

Ms. Shilling stated that she sits on a study group concerning the future management of I-19. However, her area in Green Valley is immediate. They still need a policy for retrofitting which applies throughout the rural areas in Arizona.

There being no further business, the meeting was adjourned at 12:15 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Debbie Kennedy". The signature is written in a cursive, flowing style.

Debbie Kennedy
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)